

CHAPTER 1 PURPOSE AND NEED FOR ACTION

Purpose and Need—The [environmental impact] statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action (40 CFR 1502.13).

1.1 Background

The U.S. Army Corps of Engineers (Corps) Regulatory Program is based on three broad statutory authorities: Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. For simplicity, these authorities are often referred to by section number (i.e., Section 10, Section 404, and Section 103). A detailed overview of the regulatory program is provided in Chapter 2.

Section 10 of the River and Harbors Act of 1899 focuses primarily on protecting navigation. Section 10 prohibits the unauthorized obstruction or alteration of navigable water of the United States. A Section 10 permit is required for the construction of any structure in or over any navigable water of the United States. A Section 10 permit is also required for any excavation of material from, or the deposition of material into, navigable waters of the United States that affects the course, location, condition, or capacity of those waters. In essence, Section 10 requires that a Corps permit be obtained for any activity in navigable waters of the United States.

In 1972, the Federal Water Pollution Control Act was amended by adding Section 404, which authorizes the Secretary of the Army to issue permits for discharges of dredged or fill material into waters of the United States. In 1977, the Federal Water Pollution Control Act was amended again by adding several subsections and given the common name of “Clean Water Act.” The goal of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.

The third regulatory authority is Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. Under Section 103, the Secretary of the Army may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of disposal into ocean waters. Before such permits can be issued, the Secretary must determine that the disposal of dredged material into ocean waters will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. Criteria for the selection of disposal sites are developed by the U.S. Environmental Protection Agency, in consultation with the Secretary of the Army through the Corps of Engineers.

Through more than 100 years of implementation, the scope of jurisdictional waters for Section 10 of the Rivers and Harbors Act is well established. Since Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 is limited to the disposal of dredged material into oceanic waters, the scope of jurisdiction is not disputed. In contrast, the scope of jurisdiction for the Section 404 program has been more controversial. When the amendments to the Federal Water Pollution Control Act were passed in 1972, the extent of regulatory jurisdiction under the Section 404 program was limited to tidal waters and waters that were used for interstate or foreign commerce. As a result of judicial decisions in 1974 and 1975, the Corps expanded its scope of regulatory jurisdiction under Section 404 to include tributaries to navigable and interstate waters and wetlands adjacent to those waters. In addition, there has been controversy regarding the identification and delineation of wetlands. The identification and delineation of wetlands is currently addressed through the 1987 Corps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1) and associated guidance.

To manage workload issues associated with the increase in geographic scope of jurisdiction under Section 404, in 1975 the Corps adopted regulations to allow the issuance of general permits. In the 1977 amendments to the Federal Water Pollution Control Act, the concept of general permits was incorporated into Section 404(e) of the Clean Water Act. General permits became an important mechanism for streamlining the Corps regulatory program by effectively authorizing activities that are substantially similar in nature, and result in minimal individual and cumulative adverse effects on the aquatic environment.

There are three types of general permits: nationwide permits, regional general permits, and programmatic general permits. Nationwide permits are a type of general permit issued by the Corps headquarters office to authorize activities across the country, with little delay or paperwork. Nationwide permits are reviewed and reissued on a five year basis, but may be proposed, modified, suspended, or revoked at any time. Regional general permits are issued by division or district engineers to authorize activities within a particular state, watershed, or other geographic area. Programmatic general permits are based on an existing state, local, or other Federal agency program to avoid duplication with that program.

General permits can be issued to satisfy the permit requirements of Section 10 and Section 404. Because of the extensive requirements for Section 103 permits, including comprehensive sediment evaluations for contaminants, requirements for formally designated disposal sites by the U.S. Environmental Protection Agency, and Dredged Material Management and Monitoring Plans, general permits cannot be issued under this statute.

1.2 Objectives of the Nationwide Permit Program

A principal objective of the nationwide permit program is to authorize, with little delay or paperwork, activities with minimal individual and cumulative adverse effects on the aquatic environment. The terms and conditions, including acreage limits, of nationwide permits are established to authorize most activities. Many nationwide permits also have pre-construction

notification requirements so that any activity that may result in more than minimal adverse effects on the aquatic environment will be reviewed by the Corps on a case-by-case basis. For a particular activity, the Corps may require compensatory mitigation to ensure that the authorized work results in minimal individual and cumulative adverse effects on the aquatic environment. Regional conditions and the ability to place special conditions on nationwide permit authorizations on a case-by-case basis also help the Corps to ensure that nationwide permits authorize only those activities with minimal individual and cumulative adverse effects on the aquatic environment.

Another objective of the nationwide permit program is to ensure that activities authorized by nationwide permits do not jeopardize the continued existence of a threatened or endangered species listed, or proposed for listing, under the Federal Endangered Species Act, or to destroy or adversely modify the designated critical habitat of such species. Activities authorized by nationwide permits must also comply with the requirements of the National Historic Preservation Act and other Federal historic preservation laws.

1.3 Purpose and Need

The National Environmental Policy Act requires Federal agencies to prepare environmental impact statements for major Federal actions significantly affecting the human environment. In compliance with the National Environmental Policy Act, the Corps issued a “Finding of No Significant Impact for the Nationwide Permit Program” on June 23, 1998. The Finding of No Significant Impact explains why an environmental impact statement is not required for the nationwide permit program.

In the July 1, 1998, Federal Register notice (Federal Register 1998) announcing the proposal to replace nationwide permit 26 with several new and modified nationwide permits, the Corps stated that it is committed to ensuring and demonstrating that the nationwide permit program as a whole authorizes only those activities with minimal individual and cumulative adverse effects on the environment. To be consistent with this commitment, the Corps announced that it would prepare a programmatic environmental impact statement (PEIS) for the entire nationwide permit program. Despite its position that the PEIS is not required, the Corps determined that the PEIS for the nationwide permit program would provide a comprehensive, formal mechanism to review the effects of the nationwide permit program on the environment. The PEIS would include full public involvement and comment, and identify any changes to procedures, substantive content, and implementation of the nationwide permit program that are needed to ensure that the nationwide permits authorize only activities with minimal adverse effects on the environment.

1.4 General Approach and Analytic Framework

This PEIS evaluates the nationwide permit requirements and processes and analyzes programmatic and procedural alternatives to the nationwide permit program. To accomplish this, the PEIS investigates and characterizes the structure, implementation, and performance

of the nationwide permit program as a whole, and examines how the procedures have been implemented at the Corps district level to achieve nationwide permit objectives. The PEIS identifies, evaluates, and compares programmatic alternatives and procedural changes.

The PEIS study team identified major nationwide permit program review objectives. The team then evaluated nationwide permit implementation activities in eight Corps district offices, which were in six Corps divisions and sixteen states. The evaluation of nationwide permit program implementation involved reviewing permit file documentation for approximately 475 nationwide permit activities authorized during Fiscal Year 1998 and interviewing Corps regulatory personnel and other agency employees to solicit their views on the implementation of the nationwide permit program in their respective districts.

The PEIS study team examined the following items:

A. District approaches to implementing nationwide permits:

- Processes for determining minimal effects and decisions to modify, suspend, or revoke nationwide permits on a regional basis.
- Characteristics of nationwide permits that have regional conditions placed on them.
- District procedures to establish and document regional conditions.
- District approaches to public involvement and public notice distribution.
- Mechanisms to comply with related laws, including the Endangered Species Act and the National Historic Preservation Act.

B. Processes for evaluating all permit applications, including requests for nationwide permit verifications:

- Use of discretionary authority and special conditions.
- Public notice procedures, including the solicitation of public comments.
- Measures to mitigate impacts to the environment (i.e., avoidance, minimization, and compensation).
- Compliance with the Endangered Species Act.
- Compliance with the National Historic Preservation Act.
- Agency coordination, evaluation of agency comments, and subsequent incorporation of agency recommendations into Corps permits.
- State water quality certifications and coastal zone management consistency determinations.
- Jurisdictional determinations and site visits.
- Cumulative impact assessment.
- Multiple use of nationwide permits and minimal adverse effect determinations.

- Compensatory mitigation enforcement and compliance responsibilities and structure.
- Data entry into the Regulatory Analysis and Management System, including consistency between permit files and data fields.

Potential results of implementing the programmatic alternatives are described and quantified to the extent possible. These results are expressed in terms of the expected numbers of permit actions, the estimated amounts and qualities of aquatic resources affected, mitigation approaches to reduce or offset impacts to aquatic resources, and potential direct and indirect economic impacts.

The criteria for evaluating and comparing alternatives include:

- Procedures for ensuring minimal adverse effects and ensuring protection of endangered species and historic and cultural resources.
- Consistency with Section 401 water quality certifications and coastal zone management consistency determinations.
- Costs to permit applicants and the Federal government.
- Impacts to the environment.

1.5 Organization of the Programmatic Environmental Impact Statement

This PEIS is organized in accordance with Council of Environmental Quality (CEQ) regulations at 40 CFR 1502.10. The PEIS contains:

- A cover sheet, summary, and table of contents, as specified by CEQ.
- Chapter 1 explains why the Corps is proposing the action evaluated in this PEIS.
- Chapter 2, entitled "Overview of the Regulatory Program," describes how the Corps presently administers the regulatory program. Chapter 2 also describes permit evaluation processes, including agency coordination. These descriptions are the basis of the No Action Alternative, which would simply be a continuation of existing nationwide permit procedures.
- Chapter 3, entitled "Alternatives Including the No Action Alternative," presents the alternatives considered in the PEIS, with general descriptions of the environmental impacts of those alternatives.
- Chapter 4, entitled "Affected Environment," describes components of the environment that are affected by the Corps regulatory program. It also discusses permit data from Fiscal Year 1998.
- Chapter 5, entitled "Environmental Consequences," discusses certain aspects of implementation of the Corps regulatory program, including impacts to aquatic resources authorized by the various permit types.
- A list of references, a list of preparers, a list of acronyms used in the PEIS, and a list of agencies, organizations, and persons who were sent copies of the PEIS.

Six appendices are also included:

- Appendix A – Scoping for the Nationwide Permit PEIS.
- Appendix B – Field Implementation: Case Study Methods and Analysis.
- Appendix C – Environmental Impacts Analysis.
- Appendix D – Economic Analysis.
- Appendix E – 1996 Nationwide Permits and Conditions.
- Appendix F – CalendarYear 2000 Data for the Nationwide Permits.